

1       that your space was actually compliant?

2           A.     Not at that time, no.

3           Q.     After those meetings, what happened next?

4           A.     Well, after those meetings we were in a  
5     bit of a quandary, so we decided that maybe the best  
6     recourse would be to get a building permit so that we  
7     could verify that the city had at least signed off on  
8     a -- on the renovation of our office space which  
9     happened right before we came and therefore have at  
10    least that bit of documents in our files.

11          Q.     And how did you go about doing that?

12          A.     Well, we have a gentleman, Tom Shaner, who  
13     has been employed by Easy Street since 2005, he does  
14     all of our plat surveys, he's very familiar with how  
15     to go get that kind of information. So I asked Tom  
16     if he could go up to the city and pull the building  
17     permits.

18          Q.     Did he deliver to you the building permit  
19     for your space?

20          A.     No.

21          Q.     Why not?

22          A.     He could not find one.

23          Q.     What did he find?

24          A.     He found a plat that was --

25                    MR. PAYNE: Your Honor, I'll object and

1 move to strike here based on foundation, hearsay.  
2 He's testifying not from his personal knowledge, but  
3 from someone else's, apparently.

4 THE COURT: The objection is sustained.

5 What are you seeking to strike?

6 MR. PAYNE: Just that last response.

7 THE COURT: Okay. The last response is  
8 stricken.

9 Q. (By Mr. Gordon) Did Mr. Shaner deliver to  
10 you a copy of the plat for the parking garage?

11 A. Yes, he did.

12 Q. Did you review that plat?

13 A. Yes, I did.

14 Q. Did that plat create any concerns in your  
15 mind concerning the safety of the building?

16 A. Yes, it did.

17 Q. What were those concerns?

18 A. First of all, the plat was not at all  
19 similar to the actual structure that is existing.  
20 And the plat clearly showed egress and ADA accessing  
21 that had been -- that was no longer in place.

22 MR. PAYNE: Object as far as the comment  
23 about ADA accessing and foundation and qualification  
24 of this witness to make that determination, Your  
25 Honor. I move to strike that portion of the answer.

1                   MR. GORDON: We're not offering it for the  
2 truth of the matter asserted, Your Honor, only that  
3 those were the concerns that were created when he  
4 reviewed the plat.

5                   THE COURT: All right. I'll admit it.

6                   Q.       (By Mr. Gordon) At any time did you  
7 contact or attempt to contact UOSH, the party that  
8 kind of started this process?

9                   A.       Yes. We asked -- formally asked UOSH if  
10 they would come back and reinspect the facility to  
11 either clarify their position or rescind their  
12 position.

13                  MR. GORDON: Your Honor, may I approach?

14                  THE COURT: You may.

15                  Q.       (By Mr. Gordon) Bill, I'm handing you  
16 what is marked as Exhibit Number -- I forgot to look  
17 again. Is it number 11?

18                  A.       Number 12.

19                  Q.       Number 12. Do you recognize it?

20                  A.       Yes, I do.

21                  Q.       What is it?

22                  A.       It's the documentation relative to our  
23 request to UOSH.

24                  Q.       On page 2, is that your signature?

25                  A.       Yes, it is.

1           Q.       And was this submitted to UOSH, Utah  
2 Occupational Safety and Health division?

3           A.       Yes, it was.

4           MR. GORDON: Your Honor, I would move to  
5 have this admitted into evidence.

6           MR. PAYNE: May I have just a moment to  
7 review it, Your Honor?

8           THE COURT: You may.

9           MR. PAYNE: I have no objection.

10          THE COURT: Exhibit 12 is received.

11          MR. GORDON: Your Honor, may I approach?

12          THE COURT: You may.

13          MR. GORDON: Your Honor, if I may approach  
14 again.

15          Q.       (By Mr. Gordon) I hand you what has been  
16 marked as Exhibit Number 13, Bill. Do you recognize  
17 it?

18          A.       Yes, I do.

19          Q.       What is it?

20          A.       It is the response from UOSH.

21          Q.       Very good. And did this come directly to  
22 you?

23          A.       Yes, it did.

24          Q.       Is this a true and correct copy of the  
25 letter they sent in response to your request?

1           A.     Yes, it is.

2           MR. GORDON: Your Honor, I would move to  
3 admit this into evidence.

4           MR. PAYNE: Your Honor, may I have a  
5 moment to review it?

6           THE COURT: You may.

7           MR. PAYNE: Object on the grounds of  
8 hearsay, Your Honor.

9           MR. GORDON: I would move under 8038  
10 again, Your Honor, that this is a -- the same basis  
11 as before, Your Honor, that this is, once again, a  
12 public report and that based on that it should be  
13 admitted.

14           THE COURT: I might need to see a copy of  
15 it.

16           MR. GORDON: Oh, I'm sorry, Your Honor.  
17 I've been withholding.

18           THE COURT: So Exhibit 13 is a letter from  
19 Mr. Daniel King, State of Utah Labor Commission, to  
20 Mr. Shoaf basically informing him that the complaint  
21 concerning Cloud Nine is invalid.

22           MR. GORDON: Yes. That they were not  
23 going to exercise jurisdiction, took no action at the  
24 time.

25           THE COURT: Why wouldn't this be

1 admissible under 8038?

2 MR. GORDON: 8038, Your Honor.

3 THE COURT: I mean, it is a letter, but it  
4 does appear to be a statement in any form, civil  
5 action.

6 I'm going to admit it.

7 MR. GORDON: Thank you, Your Honor.

8 THE COURT: Exhibit 13 is received.

9 Q. (By Mr. Gordon) Bill, in that letter, did  
10 UOSH choose to exercise jurisdiction over the safety  
11 issues?

12 A. No.

13 Q. After UOSH decided not to take  
14 jurisdiction, where did that leave you in trying to  
15 determine what you were going to do with the space?

16 A. Well, we could not find a building permit,  
17 we couldn't get anyone to give us a letter telling us  
18 that we were in a compliant space, and to therefore  
19 provide us with the necessary liability coverage  
20 indemnification that we thought was important. We  
21 had reservations of where we were, so we had no  
22 choice but to try to, again, ask the landlord for a  
23 further letter of indemnification, which did not  
24 happen. And that's when we went ahead and hired an  
25 engineer to see if the issues that we thought we had

1 before us were, in fact, true or not.

2 Q. At some point did you pull your people out  
3 of what has been marked on Exhibit (inaudible)?

4 MR. PAYNE: Objection, leading.

5 THE COURT: Sustained.

6 Q. (By Mr. Gordon) What did you choose to do  
7 with your employees based on the concerns that you  
8 had?

9 A. In May of 2009 we made a decision, as we  
10 could not make headway with regards to any kind of  
11 letter from anybody of -- regarding the safety of the  
12 back area, to move all of our people out of area 2,  
13 which we did.

14 And then basically in October of -- well,  
15 after we had gone through the issues of trying to get  
16 a building permit and had seen the plat and had  
17 further concerns about the overall safety of the  
18 building, then in October of '09 we made a decision  
19 to move everybody out of the building because it now  
20 was -- we were now concerned about the overall access  
21 and egress from our space in the event of a fire.

22 Q. How long was rent paid on the space?

23 A. Until the end of last year.

24 Q. Bill, the landlord claims that you're  
25 doing nothing but raising false claims about the

1 safety of the building in order to get out from  
2 underneath personal liability on the lease. Is this  
3 true?

4 A. No.

5 Q. Why not?

6 A. Compared to the other liabilities that I  
7 have relative to the bankruptcy, this is a very minor  
8 issue to worry about on a financial or any other  
9 basis, personally.

10 Q. When did you first raise -- or when did  
11 Cloud Nine first raise safety issues with the lease?

12 A. In October of 2008.

13 Q. When did Easy Street Partners actually  
14 file bankruptcy?

15 A. September the 14th of 2009.

16 Q. Bill, why did you move your employees out  
17 of the space?

18 A. On two levels. I am a -- I am financially  
19 and fiduciarily responsible to the partnership with  
20 regards to liabilities. So on a financial level,  
21 unless I could get some form of letter from the city  
22 stating categorically that we had a compliant and  
23 safe space, I felt that I was at risk if anything did  
24 happen. And so we acted accordingly and continued to  
25 try to get that letter.

1                   On a moral level I have a responsibility  
2 to my employees to not put them into an environment  
3 that I feel is unsafe or could potentially result in  
4 harm to themselves.

5                   MR. GORDON: Thank you, Your Honor. No  
6 further questions.

7                   THE COURT: Mr. Payne, any desire to  
8 cross-examine?

9                   MR. PAYNE: Yes, Your Honor.

10

11                   CROSS-EXAMINATION

12                   BY MR. PAYNE:

13                   Q.       Mr. Shoaf, Doug Payne on behalf of Gateway  
14 Center.

15                   Let me have you look at -- if you would,  
16 at Exhibit 8, which is the lease. And would you look  
17 at the front -- the first page of that document,  
18 paragraph 1 under property?

19                   A.       Uh-huh (affirmative).

20                   Q.       Will you start reading -- would you read  
21 the two sentences that begin with -- the second  
22 sentence which begins on line two, with the property  
23 consists?

24                   A.       The property consists of the building,  
25 land, common areas, landscaping and all other

1       improvements to the land including the premises. The  
2       property does not include the lower levels of the  
3       building which consist of a parking garage owned or  
4       controlled by third parties.

5           Q.     Okay. So that was your understanding, was  
6       it not, that the parking garage was not among the  
7       common areas that was part of the leased property; is  
8       that right?

9           A.     That's correct.

10          Q.     Okay. When did this UOSH inspection  
11       occur?

12          A.     In October of 2008.

13          Q.     When did UOSH provide a written report of  
14       that inspection? Was it about that time?

15          A.     They provided the report -- it looks like  
16       in November, but there's no -- there's no time on  
17       this.

18          Q.     All right.

19          A.     There's no date.

20          Q.     All right. Let me refer you to Exhibit 9.  
21       Do you see that document?

22          A.     Uh-huh (affirmative).

23          Q.     What's that document?

24          A.     That's an assignment between Cloud Nine  
25       Resorts and Easy Street Partners relative to --

1           Q.     Was Easy Street Partners obligated on the  
2 lease to Gateway Center before it executed this  
3 document?

4           A.     No.

5           MR. GORDON: Objection, Your Honor, that's  
6 calling for a legal conclusion.

7           THE COURT: Sustained.

8           Q.     (By Mr. Payne) Was it your understanding  
9 that Easy Street Partners had any legal obligation to  
10 Gateway Center on a lease of space 303 in Gateway  
11 Center prior to the execution of Exhibit 9?

12          A.     I don't know that I can tell you legally  
13 what it was obligated to do.

14          Q.     I'm not saying legally. I'm just saying  
15 did you have an understanding as to whether --  
16 whether it was obligated.

17          A.     The understanding I have is that Easy  
18 Street Partners paid the rent from day one for this  
19 lease.

20          Q.     Okay. Do you have any basis to believe  
21 that there may have been a legal obligation for Easy  
22 Street to pay rent prior to executing Exhibit 9?

23           MR. GORDON: Objection, Your Honor, the  
24 document speaks for itself.

25           MR. PAYNE: I'm not asking about the

1 document. I'm asking if he has any basis other than  
2 that document prior to that time.

3 MR. GORDON: Objection, parol evidence  
4 then.

5 THE COURT: Overruled.

6 THE WITNESS: Do I believe it has a legal  
7 responsibility?

8 Q. (By Mr. Payne) Is there any basis you  
9 have to believe that Easy Street Partners may have  
10 been obligated to Gateway Center on the lease before  
11 Exhibit 9 was signed?

12 A. Yes.

13 Q. What's that?

14 A. Easy Street Partners was provided that  
15 space so that it could conduct its business prior to  
16 and after the opening of the hotel. It housed the  
17 employees, it paid the rent. And that obligation was  
18 made by me on behalf of the partnership as the  
19 managing partner of the entity and executed by me  
20 under Cloud Nine when it first happened because there  
21 really wasn't an entity under Easy Street that was  
22 acceptable.

23 Q. So are you saying that in your mind Cloud  
24 Nine and Easy Street were basically interchangeable?

25 A. Cloud Nine was the representative partner

1 for Easy Street. And during our discussions with the  
2 landlord and his representative, Candice Colus, it  
3 was their desire that I personally guarantee this on  
4 behalf of the partnership and that it be executed  
5 with Cloud Nine Resort. At the time this was  
6 executed there was no hotel open.

7 Q. And you said -- I believe you said earlier  
8 that you had concerns about the safety of the space  
9 at or about the time of the UOSH inspection; is that  
10 right?

11 A. Yes.

12 Q. And notwithstanding that concern, you  
13 executed on behalf of Easy Street Partners Exhibit 9  
14 in January of 2009, some two or three months after  
15 the UOSH inspection; isn't that correct?

16 A. That's correct, because our auditors at  
17 that time asked that that lease be transferred over  
18 because it was, in fact, something that they did not  
19 like to see.

20 MR. GORDON: Object and move to strike the  
21 last portion of that as nonresponsive.

22 THE COURT: Sustained.

23 Q. (By Mr. Payne) And you also signed a  
24 personal guarantee or -- at least acknowledging the  
25 assumption and assignment as a personal guarantor as

1 part of Exhibit 9; isn't that correct?

2 A. That was required.

3 Q. But you signed that, that's your signature  
4 on the second page of Exhibit 9, correct?

5 A. That's correct.

6 Q. Were you ever made aware that Gateway  
7 Center took the position that Mr. Hahn had indicated  
8 that the right angle measurement was not the correct  
9 way to measure the distance?

10 A. I was aware of that, yes.

11 Q. You chose not to believe that though; is  
12 that right?

13 A. No. Mr. Hahn actually stated to me that  
14 there were two ways to measure and one was the way  
15 that was 98.8 and the other was 103.

16 Q. Isn't it true that Park City has never  
17 issued a violation for this space with respect to  
18 that 100-foot issue as far as distance from exits?

19 A. That's correct.

20 Q. And isn't it also true that Park City has  
21 indicated that that exit is in compliance?

22 A. I don't believe that they have issued  
23 anything about the exit being in compliance. They  
24 did issue something regarding the 100 feet.

25 Q. Well, the 100-feet distance to the exit or

1 elevator, correct?

2 A. Well, to be very clear, 100 feet does not  
3 get you to the exit. You're 103 feet to the exit.

4 Q. Let me refer you to Exhibit 5. Do you see  
5 that document?

6 A. Uh-huh (affirmative).

7 Q. You've seen that before, haven't you?

8 A. Yes, I have.

9 Q. In paragraph numbered number 1, can you  
10 read -- can you read through that paragraph and tell  
11 me if you still take the position that the city's  
12 never indicated that the 100-foot requirement was  
13 satisfied?

14 A. Mr. Shoaf contacted the Park City building  
15 department to discuss his concern of exiting within  
16 the office space 303.

17 Roger Evans, plan examiner, and myself  
18 measured the distance at 97 feet at which point you  
19 have direct access to an enclosed stairway or front  
20 entry door.

21 In the current 2006 International Building  
22 Code, this situation is divined as the common path of  
23 egress -- I'm sorry, the common path of egress  
24 travel.

25 The 1994 Uniform Building Code limits the

1       distance through the atrium at 100 feet as per  
2       section 402.4.

3                 All tenants have access to one of the  
4        enclosed stairways that complies with this  
5        requirement.

6                 Section 1003.4 allows 150 travel distance  
7        because the building has an automatic fire sprinkler  
8        system.

9                 Q.        Okay. All right. Thank you.

10                 So do you still take the position that the  
11        city's never indicated that that 100-foot requirement  
12        is satisfied?

13                 A.        This is the first document we've ever  
14        received where they put it in writing that we are  
15        compliant.

16                 Q.        Did you ever provide a copy of the UOSH  
17        report to Gateway Center prior to the reply brief  
18        that was -- had as an attachment that was served last  
19        week?

20                 A.        I did not, no.

21                 Q.        Where did you move the employees of Easy  
22        Street Partners who had been housed in the Gateway  
23        Center space when you pulled employees out?

24                 A.        We sequestered what was the employee  
25        locker room and lunchroom area and converted it into

1       offices.

2           Q.     And where is that?

3           A.     In the basement.

4           Q.     Of which building?

5           A.     Of the Sky Lodge.

6           Q.     Of the Sky Lodge. So you were able to  
7       find space to house employees there; is that correct?

8           A.     At the harm of other employees, yes.

9           Q.     I would appreciate a yes or no answer to  
10      the question.

11                  You didn't ever ask Paul Piper or Gateway  
12      Center to help you get a copy of the building permit,  
13      did you?

14           A.     I don't think I did. I don't know if  
15      anyone else did.

16                  MR. PAYNE: May I have just one moment,  
17      Your Honor?

18                  THE COURT: You may.

19                  MR. PAYNE: That's all I have of this  
20      witness, Your Honor.

21                  THE COURT: Any desire to redirect?

22                  MR. GORDON: I will be brief, Your Honor.

23

24                  REDIRECT EXAMINATION

25                  BY MR. GORDON:

1 Q. Bill, why did you sign the assignment?

2 A. I'm sorry?

3 Q. Why did you sign the assignment of the  
4 lease?

5 A. To put the lease in the proper structure  
6 of Easy Street Partners.

7 Q. When was the first time that you received  
8 any correspondence from the city indicating that your  
9 space was compliant for purposes of the egress issue?

10 A. April 8th of this year.

11 Q. When did you first ask the landlord to  
12 obtain a letter from the city?

13 A. In October of 2009 -- eight -- nine.

14 Q. How many months had passed in between your  
15 first request and when you finally received something  
16 from the city?

17 A. It looks like about 14 or -- 14 or more  
18 months.

19 Q. Did the landlord deliver this letter?

20 A. No.

21 Q. How did you receive the letter?

22 A. The letter was received due to our asset  
23 manager meeting with Ron Ivie and with our engineer  
24 to present his report and asking the city on behalf  
25 of the asset manager and the bankruptcy situation to

1 clarify the situation.

2 MR. GORDON: No further questions, Your  
3 Honor.

4 MR. PAYNE: None, Your Honor.

5 THE COURT: You may step down.

6 THE WITNESS: Do I just leave all this  
7 here, Your Honor?

8 THE COURT: You can just leave that there,  
9 yes.

10 MR. GORDON: Your Honor, this will be my  
11 last witness.

12 We'll call Marina Soto.

13 THE CLERK: Please step forward and raise  
14 your right hand.

15

16 MARINA SOTO,

17 called as a witness, having been duly  
18 sworn, was examined and testified as follows:

19

20 THE CLERK: Please take the witness stand.

21 State and spell your name.

22 THE WITNESS: My name is Marina Soto,  
23 M-A-R-I-N-A, S-O-T-O.

24 \*\*\*

25 \*\*\*

1                            DIRECT EXAMINATION

2                            BY MR. GORDON:

3                            Q.       Marina, where do you work?

4                            A.       I work for Easy Street Partners.

5                            Q.       What do you do?

6                            A.       I'm the human resources director.

7                            Q.       What is your official -- well, you just  
8 told me your official title.

9                            How long have you worked for Easy Street  
10 Partners?

11                          A.       It will be three years in July of this  
12 year.

13                          Q.       Do you remember what happened on September  
14 18th, 2008?

15                          A.       Yes, I do.

16                          Q.       What happened?

17                          A.       I had a meeting with an agent from the  
18 UOSH.

19                          Q.       Did you -- what happened when you met with  
20 the agent from UOSH?

21                          A.       We first met at the Gateway Center where  
22 my office was. We had a previous meeting where he  
23 explained to me what he was going to walk through the  
24 hotel across the street. When we were leaving across  
25 the street he asked me about my office. And I said,

1 well, this is our office here.

2 Q. And which -- where was your office  
3 located?

4 A. At the Gateway Center.

5 Q. Okay.

6 A. And he told me that he needed to inspect  
7 that as well. And I told him that I only wanted him  
8 to inspect the hotel. And he said, well, this is  
9 part of where employees are, so this will be part of  
10 the overall inspection.

11 Q. I see.

12 A. So he inspected the Gateway and then we  
13 moved forward to the hotel.

14 Q. Were you with him when you walked through  
15 the Gateway Center space?

16 A. Yes, sir. I was with him at all times.

17 Q. Did he comment on the safety of the space?

18 A. Yes, he did.

19 Q. Did any of those comments or concerns make  
20 it into the official report that he later issued?

21 MR. PAYNE: Objection, leading and it's  
22 characterizing it as concerns. There's no evidence  
23 that there were any concerns expressed.

24 THE COURT: I'm going to overrule the  
25 objection.

1 Q. (By Mr. Gordon) Did any of the things  
2 that you discussed make it into the report?

3 A. Yes.

4 MR. GORDON: Your Honor, we have  
5 recently -- we have previously marked as Exhibit 11  
6 the UOSH report. And let me approach and see if we  
7 can find that for Ms. Soto, if I may.

8 THE COURT: All right.

9 Q. (By Mr. Gordon) Ms. Soto, I'm handing you  
10 what is marked as Exhibit 11. Do you recognize it?

11 A. Yes, I do.

12 Q. What is it?

13 A. This is the report that was sent back to  
14 me from the UOSH agent.

15 Q. Is there any place in this report that  
16 contains analysis of your walk-through of the Gateway  
17 Center with the UOSH inspector?

18 A. Yes.

19 Q. Can you tell me where?

20 A. Let me find -- in page 9.

21 Q. Can you, please, explain what the analysis  
22 is there?

23 A. It says the description exit sign not  
24 close enough to office stairs. Do you want me to  
25 explain what this is?

1 Q. Yes.

2 A. When we were leaving to the hotel, the  
3 UOSH agent pointed out to me that the door to the  
4 stairways didn't have an exit sign, so he didn't know  
5 it was an exit. So he pointed out that we needed to  
6 put an exit sign in there. So I corrected him. I  
7 said that we do have an exit sign in the glass doors.  
8 And he corrected me back and he says the glass doors  
9 will take you to a common area. In your office, this  
10 is the emergency door that will take you to the  
11 stairs in case of an emergency, like a fire, he  
12 mentioned.

13 Q. I see.

14 A. And he says and this door doesn't have any  
15 signs that it will take you outside.

16 Q. Okay. Very good. Is this a true and  
17 correct copy of the report that you received from the  
18 UOSH inspector?

19 A. Yes, it is.

20 MR. GORDON: Your Honor, I would move to  
21 admit this into evidence.

22 MR. PAYNE: Same objection, hearsay.

23 MR. GORDON: Same response, Your Honor.

24 THE COURT: I think with the testimony  
25 from Ms. Soto, the Court finds adequate foundation

1 and Exhibit 11 will be received.

2 MR. GORDON: Thank you, Your Honor. No  
3 further questions.

4 THE COURT: You may -- oh, Mr. Payne.

5

6 **CROSS-EXAMINATION**

7 **BY MR. PAYNE:**

8 Q. Ms. Soto, you referred to the top of page  
9 of this UOSH report, which is Exhibit 11, as being  
10 the part of that report that talks about an  
11 inspection of the Gateway Center; is that right?

12 A. Yes.

13 Q. And the lack of an exit sign over a  
14 stairway; is that right?

15 A. Yes, sir.

16 Q. Is there anything in this report that you  
17 are aware of that reflects any concern or possible  
18 violation because an exit is more than 100 feet from  
19 some of the space?

20 In this report. Can you point to anything  
21 in the report that says that?

22 A. Not in the report.

23 Q. Okay. So page 9 -- okay.

24 MR. PAYNE: No further questions.

25 MR. GORDON: Nothing further, Your Honor.

1                   THE COURT: You may step down.

2                   THE WITNESS: Do you want me to leave this  
3 here?

4                   MR. GORDON: Your Honor -- I'm sorry. I  
5 have no further witnesses, Your Honor.

6                   THE COURT: Mr. Payne, do you have any  
7 witnesses?

8                   MR. PAYNE: Yes. I would like to call  
9 Mr. Paul Piper.

10                  THE CLERK: Please step forward and raise  
11 your right hand.

12

13                  PAUL PIPER,

14                  called as a witness, having been duly  
15 sworn, was examined and testified as follows:

16

17                  THE CLERK: Please take the witness stand.

18                  State and spell your name.

19                  THE WITNESS: Paul Piper, P-A-U-L,  
20 P-I-P-E-R.

21                  MR. PAYNE: The break didn't do me any  
22 favors, Your Honor. I shuffled my papers.

23

24                  DIRECT EXAMINATION

25                  BY MR. PAYNE:

1 Q. Would you, please, state your full name?

2 A. Paul Piper.

3 Q. What is your occupation, Mr. Piper?

4 A. I am a property manager.

5 Q. For whom are you employed?

6 A. CRG. CRG Utah Management.

7 Q. And where are you employed?

8 A. Our office is at 614 Main Street, Park  
9 City, Utah.

10 Q. Park City, Utah. Are you familiar with  
11 the Gateway Center property?

12 A. Yes, I am.

13 Q. Do you have any involvement with respect  
14 to that property?

15 A. Yes. I am the property manager.

16 Q. How long have you been the property  
17 manager for Gateway Center?

18 A. Since September 1st, 2008.

19 Q. Okay. Are you familiar with the space  
20 in -- that's been labeled as space 303 in the Gateway  
21 Center?

22 A. Yes, I am.

23 MR. PAYNE: Permission to approach the  
24 witness, Your Honor.

25 THE COURT: You may.

1           Q.       (By Mr. Payne) Mr. Piper, I've handed you  
2 what's been marked as G-1, G for Gateway. Do you  
3 recognize this document?

4           A.       Yes, I do.

5           Q.       Is that your signature on that document?

6           A.       Yes, it is.

7           Q.       Did you assist in the preparation of this  
8 document?

9           A.       Yes, I did.

10          Q.       Was it based upon the business records  
11 that you maintain as the property manager of Gateway  
12 Center in the ordinary course of business?

13          A.       Yes, it was.

14                    MR. PAYNE: I'll move for admission of  
15 Exhibit G-1, Your Honor.

16                    THE COURT: Any objection?

17                    MR. GORDON: I'm just looking through it.  
18                    Is it this entire packet that we're  
19 admitting? Is that correct?

20                    MR. PAYNE: Yes. It's the proof of claim  
21 that's on file with the Court.

22                    THE COURT: Yes.

23                    MR. GORDON: Okay.

24                    No objection, Your Honor.

25                    THE COURT: Exhibit G-1 is received.

1 Q. (By Mr. Payne) Mr. Piper, does Park City  
2 conduct periodic inspections of the Gateway Center  
3 building?

4 A. Yes, they do.

5 Q. How often does it do that?

6 A. Annually. It's the -- usually the --

7 MR. GORDON: Objection, Your Honor.

8 Clarification. When he says "Park City," who does he  
9 mean?

10 THE WITNESS: It's usually the fire  
11 authorities.

12 Q. (By Mr. Payne) Fire authorities, okay.  
13 And how long have you been -- you personally, been  
14 managing the Gateway Center property?

15 A. Well, since -- since September 1st, 2008,  
16 so --

17 Q. Okay. That's fine. That's good enough.  
18 And during the time that you've been managing the  
19 property, have there been such inspections by the  
20 Park City fire authorities?

21 A. Yes, there has.

22 Q. And when have those occurred?

23 A. They usually occur in January.

24 Q. Okay.

25 A. Or you could say the winter.

1           Q.     Have you ever been given notice by the  
2     city fire inspectors of any material violations of  
3     the fire code?

4           A.     When you say material, you mean just any  
5     violation or --

6           Q.     Major. Major.

7           A.     Major violation. No.

8           Q.     No. Okay. And in connection with those  
9     reports -- excuse me. In connection with those  
10    inspections, have you received a report -- report  
11    from the city?

12          A.     Yes, I have.

13          Q.     All right.

14                MR. PAYNE: May I approach the witness,  
15    Your Honor?

16                THE COURT: You may.

17          Q.     (By Mr. Payne) Mr. Piper, I've handed you  
18    two documents. One -- let's look at G-5 first. And  
19    the other one is G-12. But let's look at G-5. Do  
20    you recognize that document?

21          A.     Yes, I do.

22          Q.     Can you tell me what that is?

23          A.     That's the fire safety inspection report  
24    from January 27th, 2009 for Gateway Center.

25          Q.     This was received by you as the

1 building -- the property manager for Gateway Center?

2 A. It was actually received by another  
3 employee of CRG.

4 Q. Okay. But -- well, your office?

5 A. Right.

6 Q. Is that correct?

7 A. Right.

8 Q. And in connection with this inspection,  
9 did you understand that there were any significant  
10 problems with fire safety in connection with the  
11 Gateway Center property?

12 A. Not significant, no.

13 Q. Okay.

14 MR. PAYNE: Your Honor, I will offer  
15 Exhibit G-5.

16 THE COURT: Is there any objection?

17 MR. GORDON: I know the response, Your  
18 Honor. I'll just make it as part of the record, as  
19 hearsay.

20 MR. PAYNE: And I will rely on 8038.

21 THE COURT: 8038, yes.

22 The objection is overruled. Exhibit G-5  
23 is received.

24 Q. (By Mr. Payne) Let me refer you to  
25 Exhibit G-12, Mr. Piper.

1 A. Okay.

2 Q. Have you seen that document before?

3 A. Yes, I have.

4 Q. Can you tell me what that is?

5 A. This is the fire inspection report --

6 Where's the date on this one? The inspection date  
7 was 3-5-2010.

8 Q. Was this something that was provided to  
9 your office by Park City fire department?

10 A. Yes, it was.

11 MR. PAYNE: I'll offer Exhibit G-12, Your  
12 Honor.

13 MR. GORDON: Same objection, Your Honor,  
14 hearsay.

15 MR. PAYNE: Same argument in support.

16 THE COURT: Same ruling. Exhibit G-12 is  
17 received.

18 Q. (By Mr. Payne) Mr. Piper, what -- do you  
19 have a practice when you become aware of code  
20 violations for a building, whether they're fire code  
21 or other code violations?

22 A. We try to remedy any violations or any  
23 wrongdoings.

24 Q. You try to -- you try to remedy the  
25 violations; is that what you said?

1           A.       Right.  We remedy the violations.

2           Q.       Your voice trailed off a little bit there.  
3 I'm sorry.

4           A.       Sorry.

5           Q.       Other than the violations asserted here  
6 on -- in -- minor fire code violations in G-5 and  
7 G-12, have you become -- been made aware of any code  
8 violations for the Gateway Center property while  
9 you've been managing it?

10          A.       Not by the city.

11          Q.       Not by the city.  Okay.  From another  
12 source, have you?

13          A.       Yes.

14          Q.       Tell me about that.

15          A.       The other source was from the tenant, Easy  
16 Street Partners.

17          Q.       Okay.  What violations are you referring  
18 to?

19          A.       The first violation was the amount of --  
20 the 100 feet or more or less it took to either see or  
21 get to an exit in their space.

22          Q.       Okay.  Did you believe that to be a  
23 violation or an alleged violation?

24          A.       I believed it to be an alleged violation.

25          Q.       But you took some action to try to get

1 into that, to address that?

2 A. Yes. I contacted the architect.

3 Q. Okay. And after -- okay. Any other  
4 violations or issues that you've dealt with in  
5 that -- regarding violations or claimed violations?

6 A. The other alleged violations. There was  
7 some debris in a stairwell in the parking garage, and  
8 we had that removed.

9 Q. Okay. When did you become aware of that  
10 being an issue?

11 A. That was in a letter from Easy Street's  
12 architects. It's Summit -- is it Summit --

13 Q. Summit Engineering?

14 A. Summit Engineering. And that was in  
15 February of 2010.

16 Q. And how long after learning of that did it  
17 take you to take action?

18 A. It was immediately.

19 Q. Immediately. Okay. All right. Any other  
20 issues with any code violations or alleged code  
21 violations that you have been made aware of that were  
22 not of the minor type in the fire inspection reports?

23 A. Any major?

24 Q. Yes.

25 A. No, not that I'm aware of.

1           Q.     Are you aware of there being an allegation  
2     that there was noncompliance with respect to ADA  
3     parking in the parking garage?

4           A.     Yes, I was.

5           Q.     And when did you become aware of that?

6           A.     With the letter, the same letter that was  
7     given to me from Summit Engineering in February 2010.

8           Q.     Did you do anything after learning of that  
9     alleged violation?

10          A.     The first thing I did was actually  
11     contacted the city because it was referring to their  
12     portion of the garage.

13          Q.     When you say "their portion," explain  
14     that. Does the city own part of the garage?

15          A.     Yes. The city owns the majority of the  
16     upper level garage with the exception of two parking  
17     spaces.

18          Q.     Is the other -- is the rest of the parking  
19     garage also privately owned?

20          A.     The lower parking garage is privately  
21     owned.

22          Q.     And is that why it's not part of the  
23     leased property on the leases?

24          A.     I would imagine.

25          Q.     All right. So what did you do after --

1 you contacted Park City. Then tell me what happened.

2 A. Well, to remedy the alleged code, we moved  
3 the parking barricades back to make space for someone  
4 to egress if they needed to.

5 Q. Okay. And you did that shortly after  
6 learning of the ADA issue?

7 A. Yes.

8 Q. All right. Have you ever been provided a  
9 copy of a UOSH, Utah Occupational Safety and Health  
10 administration, or OSHA inspection of Sky Lodge's or  
11 any part of the Gateway?

12 A. Not before the one I saw yesterday.

13 Q. Okay. And that was one that I showed you;  
14 is that correct?

15 A. That's correct.

16 Q. That had been provided as part of a  
17 document -- papers filed with the court by Easy  
18 Street Partners?

19 A. Correct.

20 Q. I indicated that; is that right?

21 A. I never received it before that, no.

22 Q. Okay. You were here in the courtroom and  
23 heard Mr. Shoaf testify, did you not?

24 A. Yes, I did.

25 Q. Did you hear him testify that Easy Street

1      Partners vacated the area that he had marked as, I  
2      think, area 2 on Exhibit Number -- I would have to  
3      refer to that exhibit number. Is that Exhibit 12?  
4      With the diagram and the map.

5                THE COURT: I think 10.

6      Q.        (By Mr. Payne) Excuse me, Exhibit 10.  
7      Why don't we refer to Exhibit 10.

8      A.        Okay.

9      Q.        Do you see the area that's been  
10     highlighted and colored, I think, in green on this  
11     version?

12     A.        Yes.

13     Q.        Marked area 2?

14     A.        Yes, I see it.

15     Q.        And you're familiar with that entire space  
16     there that's space 303, are you not?

17     A.        Yes, I am.

18     Q.        You heard Mr. Shoaf testify that Easy  
19     Street Partners vacated that space in March 2009, did  
20     you hear that?

21     A.        In March -- yes, I did.

22     Q.        And do you agree with that?

23     A.        No, I do not.

24                MR. GORDON: Objection, Your Honor, that  
25     was incorrect. I believe the testimony was May of

1       2009.

2                    MR. PAYNE: May. Okay. Let me correct  
3       the question then if that was the testimony. I  
4       apologize.

5                    Q. (By Mr. Payne) May -- you heard testimony  
6       May 2009 and that space was vacated, area 2. Do you  
7       agree with that?

8                   A. No, I did not.

9                   Q. Tell me why you do not.

10          A. They still had equipment, they still met  
11       in the conference room, which is in area 2. They  
12       also used the small kitchen which is in area 2.

13          Q. Okay.

14          A. And they also had a copier in area 2.

15          Q. Okay. Can you point to -- hold up Exhibit  
16       10 like this sideways so that maybe the Judge can see  
17       it.

18          A. Oh, sure.

19          Q. And point to the part of it that is the  
20       conference room.

21          A. This is the conference room.

22          Q. Okay. You're pointing -- okay. And can  
23       you point to the area where the kitchen is?

24          A. This is where the kitchen is.

25          Q. Okay. Can you point to where a copy

1 machine was?

2 A. Right in this area.

3 Q. Okay. So the record should reflect for  
4 the conference room you pointed to a square portion  
5 of that. Maybe what we ought to do is have you get a  
6 pen and mark that, if you would.

7 A. Sure.

8 Q. Hold on. Maybe just write C-O-N-F or  
9 something where the conference room is.

10 A. Okay.

11 Q. And where the kitchen is, K-I-T-C-H,  
12 maybe.

13 And then just write copier in the area  
14 where the copier was.

15 A. Okay.

16 Q. All right. Thank you. And can you tell  
17 me how you knew that that area was still being used  
18 after May 2009, Mr. Piper?

19 A. On occasion I will come into the spaces to  
20 either talk to tenants or if the tenants need any  
21 information from me, say, a billing statement,  
22 something like that. And I've noticed that they were  
23 still in the space. And also when I went into Hunter  
24 Capital, which is the adjacent space --

25 Q. Adjacent to --

1 A. Adjacent to Easy Street's place.

2 Q. Okay.

3 A. They actually have, like, frosted windows  
4 in their conference room and you can see if someone  
5 is in there. And you can see if the lights are on or  
6 if they're having a meeting.

7 Q. So you observed activity in the conference  
8 room --

9 A. Right.

10 Q. -- is that correct?

11 A. Correct.

12 Q. Is there any other kitchen facility in the  
13 space number 303 other than the one you've  
14 identified?

15 A. No.

16 Q. And I think you also heard Mr. Shoaf  
17 testify that the space in its entirety was vacated  
18 in, I think, November of 2009, I believe he said.

19 A. I think he said October.

20 Q. October. Okay. Do you agree with that?

21 A. No, I do not.

22 Q. Why?

23 A. They had equipment and some personnel in  
24 the space at least through January 2010.

25 Q. Okay. How do you know that?

1           A.     I'm always in Gateway Center and I --  
2 well, the main reason I know that they still had  
3 equipment is because it wasn't all moved out. You  
4 could see it.

5           Q.     Okay.

6           A.     And when walking through Gateway Center,  
7 you can tell if someone is in the space or not, if  
8 the lights are on or -- you know, it wasn't vacated.

9           Q.     Since January of this year, has that  
10 equipment been removed?

11          A.     Yes.

12          Q.     And do you know when that was,  
13 approximately?

14          A.     Approximately -- I had the space -- this  
15 space was for sure empty in March, of everything. I  
16 would say it was probably in February 2010.

17          Q.     Okay.

18          A.     They've got -- every -- all the desks, all  
19 the equipment out.

20          Q.     Did anyone on behalf of Easy Street  
21 Partners or Cloud Nine or Bill Shoaf ever ask you to  
22 assist them in getting -- obtaining a copy of the  
23 building permit that had been obtained from Park City  
24 to remodel their space before they moved in?

25          A.     No.

1 MR. PAYNE: That's all I have, Your Honor.

2 THE COURT: Any cross-examination?

3 MR. GORDON: Yes, Your Honor.

4

5 **CROSS-EXAMINATION**

6 **BY MR. GORDON:**

7 Q. Good afternoon, Mr. Piper.

8 A. Good afternoon.

9 Q. I want to refer to you -- or you to  
10 Exhibits 1 through 4. If you can pull those up.  
11 Those should be letters from my office.

12 A. Oh. Thank you.

13 Q. You testified that you've been the  
14 property manager since September 1 of 2008; is that  
15 correct?

16 A. That's correct.

17 Q. I'm going to refer to Exhibit 1, which is  
18 a letter dated April 13, 2009. Have you ever seen  
19 this letter?

20 A. It looks familiar.

21 Q. Okay. Have you read it?

22 A. Yes. But there's -- if I'll read through  
23 it, I'll tell you. Hold on.

24 Q. That's fine.

25 A. Yes. I've read this letter.

1 Q. Very good. So you've seen this letter.

2 Let's move to the next one, September 17,  
3 2009, Exhibit Number 2. Have you seen that letter?

4 A. Yes, I've seen this letter.

5 Q. When did you see it?

6 A. The exact date?

7 Q. Even a ballpark.

8 A. I would say September 2009.

9 Q. Okay. Very good.

10 Let's go to October 20th, the next letter,  
11 Number -- let's see here. The October 20th letter.  
12 Have you seen this letter?

13 A. Yes, I've seen this letter.

14 Q. When did you receive it or when did you  
15 first see it?

16 A. I don't believe I saw this one until  
17 November, but -- I have seen it. November 2009.

18 Q. Okay. So it would have been around  
19 November is when you received it?

20 A. Yeah.

21 Q. Fair enough. And then finally, the last  
22 one, February 19th, 2010, Exhibit Number 4, have you  
23 seen this one?

24 A. Yes.

25 Q. When did you see this one?

1 A. I would say around February 2010.

2 Q. Okay. And I did not ask you on the first  
3 one, Exhibit Number 1, when did you first see this  
4 one?

5 A. April 2009. It may have been May. But it  
6 would have been around April 2009.

7 Q. Okay. Very good. Now, you've testified  
8 today that the first time that you became aware of  
9 major violations in the building was from the  
10 February 19 letter; is that correct?

11 A. February 19 letter.

12 Q. And that's --

13 MR. PAYNE: Objection, I think that  
14 mischaracterizes his testimony. He indicated that he  
15 was aware of the 100-foot issue.

16 THE COURT: What was the question?

17 MR. GORDON: I'm sorry. I indicated that  
18 his testimony was that the first time he became aware  
19 of major violations was through the February 19th,  
20 2010 letter.

21 THE COURT: Is that your testimony?

22 THE WITNESS: Are you talking about  
23 alleged violations or just any violation?

24 Q. (By Mr. Gordon) Alleged violations.

25 A. Alleged violations from the tenant,

1       correct?

2           Q.     Uh-huh (affirmative).

3           A.     The first one was actually October 2008.

4           Q.     Uh-huh (affirmative). Okay.

5           A.     Not February 2010.

6           Q.     Okay. Very good. I'm going to walk  
7 briefly through these letters. In the first letter  
8 on April 13th, 2009, if you turn over --

9           A.     Which exhibit?

10          Q.     I'm sorry. Exhibit Number 1. And I will  
11 slow down.

12          A.     I'm ready.

13          Q.     There was a request made in this letter to  
14 obtain a letter from the city inspectors. Did the  
15 landlord ever obtain a letter from the city  
16 inspectors indicating that the space was compliant?

17          A.     We've never obtained that letter until --  
18 or a letter even remotely talking about that until  
19 April 2010.

20          Q.     Okay. So just in this last week?

21          A.     Right.

22          Q.     In the September 17th letter there were  
23 issues raised concerning CAMs in that letter,  
24 correct?

25          A.     It's Exhibit 2?

1           Q.     Exhibit 2, I'm sorry, yes.

2           A.     Yes, there were.

3           Q.     Okay. And the landlord never provided any  
4 documentation confirming or addressing these issues  
5 to the tenant, correct?

6           A.     I am yet to be specific with -- are you  
7 talking about any documentation for CAM?

8           Q.     Yes, for CAMs and how they were being  
9 used.

10          A.     Like a CAM reconciliation?

11          Q.     Uh-huh (affirmative).

12           MR. PAYNE: Your Honor, I'll object on  
13 relevance here, again. I think we're veering back  
14 into --

15           THE COURT: I think we decided we're going  
16 to reserve that for another time. So I'm going to  
17 sustain the objection on relevancy.

18           MR. GORDON: Okay.

19          Q.     (By Mr. Gordon) Let's see here. There  
20 were also issues raised in this letter concerning ADA  
21 compliance, correct?

22          A.     Exhibit 2?

23          Q.     Exhibit 2 on the second page under  
24 violation number 2.

25          A.     Yes.

1           Q.     And you have, I believe, testified that  
2 you did go over and move barricades in an attempt to  
3 try to get the space to be compliant; is that  
4 correct?

5           A.     That's correct.

6           Q.     So you admit that there were some concerns  
7 there about ADA compliance and you responded to those  
8 concerns?

9           A.     Yes.

10          Q.     Okay. Let's see here. We also put the  
11 landlord on notice in this one that there were some  
12 concerns concerning the way that the parking stalls  
13 were arranged in the parking garage, correct?

14          A.     Are we talking about the upper level?

15          Q.     Well, the parking garage just as a parking  
16 garage.

17          A.     As a whole?

18          Q.     As a whole.

19          A.     Yeah. You're asking did you raise  
20 concerns. Yes, in this letter.

21          Q.     And the Park City building inspector in  
22 April, months later, indicated that there was a  
23 confirmation that those concerns were legitimate,  
24 correct?

25                   MR. PAYNE: I'm -- objection, I think he's

1 asking the witness to testify from documents that are  
2 in the record and --

3 MR. GORDON: Okay. I'm sorry, Your Honor.

4 MR. PAYNE: The documents speak for  
5 themselves.

6 THE COURT: Sustained.

7 Q. (By Mr. Gordon) The letter from Park  
8 City, from the inspector, referenced the parking  
9 stall issue, correct?

10 A. Which letter?

11 Q. The April 15 letter.

12 A. From Park City?

13 Q. Yes.

14 A. Which exhibit is that?

15 Q. Number 5.

16 A. Number 5.

17 MR. PAYNE: That letter is dated April 8,  
18 if that's Exhibit 5.

19 MR. GORDON: I'm sorry. Exhibit 8, Your  
20 Honor.

21 THE WITNESS: Can I have the question  
22 again?

23 Q. (By Mr. Gordon) Yes. So the letter from  
24 Park City referenced the issue with the parking  
25 stalls and the parking garage, correct?

1 A. One second.

2 THE COURT: Maybe if you could direct the  
3 witness's attention to the --

4 MR. GORDON: To a specific -- I apologize.

5 Item number 8, Your Honor.

6 THE COURT: Item number 8.

7 THE WITNESS: I'm looking at Exhibit 5.

8 Sorry, I was looking at the wrong one.

9 Which exhibit?

10 MR. GORDON: May I approach?

11 THE COURT: Yes.

12 THE WITNESS: Oh, item 8. Okay. Okay.

13 Your question one more time. I'm sorry.

14 Q. (By Mr. Gordon) That letter refers to  
15 issues with the parking stalls, correct?

16 A. Yes, it does.

17 Q. Let's move to Exhibit Number 3, the  
18 October 20 letter. This letter raised issues  
19 concerning the west fire exit. If you can turn over  
20 to page 3 with me. On page 3 of 4, there were issues  
21 raised and the landlord was put on notice of concerns  
22 concerning the fire exit in the west -- the west fire  
23 exit, correct?

24 A. Let me find the passage.

25 So, yes, it is talking about the west --

1 west stairwell.

2 Q. Okay. Very good. And then --

3 MR. PAYNE: Your Honor, is there a  
4 question here other than to point to documents? Is  
5 this summing up through a witness? I'm not sure what  
6 the question really is, other than to have an  
7 opportunity to identify particular parts of documents  
8 that are in evidence.

9 MR. GORDON: Your Honor, this document --  
10 I want to confirm that this witness saw these  
11 documents, that notice was given to the landlord --

12 THE COURT: Well, I think that's not the  
13 question. Now, on your previous ones you asked a  
14 question. On this one you haven't asked a question,  
15 so if you --

16 MR. GORDON: Oh, I'm sorry. Okay. I  
17 apologize. I thought that I had asked a question,  
18 Your Honor. Very good, I will ask the question.

19 Q. (By Mr. Gordon) And I thought I had asked  
20 the question, the letter refers to issues or concerns  
21 with the west fire exit, correct?

22 A. Yes, it does.

23 Q. Okay. Thank you. Let's see here. The  
24 evidence that you have provided to the Court -- you  
25 provided a fire inspection in 2009, correct?

1 A. Yes.

2 Q. No fire inspection for 2008, correct?

3 A. I could retrieve that. But, yes, there  
4 should be one.

5 Q. It hasn't come into evidence, correct?

6 A. Not that I know of, no.

7 Q. And you're not really in a position to  
8 testify as to the difference between fire code and  
9 engineering code, correct?

10 A. No.

11 Q. Let's see here.

12 MR. GORDON: No further questions, Your  
13 Honor.

14 THE COURT: Any redirect, Mr. Payne?

15 MR. PAYNE: Very briefly, Your Honor.

16 THE COURT: All right.

17

18 **REDIRECT EXAMINATION**

19 **BY MR. PAYNE:**

20 Q. Mr. Piper, are you aware of whether or not  
21 Gateway Center responded to letters from Mr. Gordon  
22 that expressed alleged violations and problems with  
23 the leased space?

24 A. By responding, do you mean contacted  
25 counsel?

1 Q. Whether counsel communicated with  
2 Mr. Gordon.

3 A. Yes, they did.

4 MR. PAYNE: Your Honor, permission to  
5 approach.

6 THE COURT: All right.

7 MR. PAYNE: Your Honor, I've handed the  
8 witness what's been marked as Exhibits G-7 and G-9,  
9 respectively. And one's -- G-7 is a September 24th,  
10 2009 letter from Diane Banks to Corbin Gordon. G-9  
11 is a March 5th, 2005 letter from Ms. Banks to  
12 Mr. Gordon. And pursuant to stipulation with the  
13 parties, I think that we've agreed that these can be  
14 received into evidence. I would offer them into  
15 evidence.

16 THE COURT: Any objection?

17 MR. GORDON: No, Your Honor, just subject  
18 to the stipulation.

19 THE COURT: Exhibit G-7 and G-9 are  
20 received.

21 And the stipulation was not going to the  
22 truth of the matter, just that the correspondences  
23 were exchanged?

24 MR. PAYNE: Yes.

25 Q. (By Mr. Payne) So, Mr. Piper, have you

1 seen Exhibits G-7 and G-9 before?

2 A. Yes, I have.

3 Q. Did Gateway Center rely on its counsel and  
4 other professionals to investigate and respond to  
5 letters from Mr. Gordon about alleged violations?

6 A. Yes, it did.

7 MR. PAYNE: That's all I have, Your Honor.

8 THE COURT: All right. Well, we're 5:00,  
9 and I'm sorry, I do have to leave. But I have time  
10 on my calendar tomorrow afternoon if parties are  
11 available at that time.

12 Do you need time for additional testimony,  
13 Mr. Payne?

14 MR. PAYNE: Yes, I do, Your Honor.

15 And I have with me here Mr. Wallace  
16 Cooper, who is an architect whose schedule is  
17 probably tighter than mine is in the next foreseeable  
18 time.

19 So what time tomorrow afternoon, Your  
20 Honor?

21 THE COURT: Any time.

22 MR. PAYNE: Any time?

23 No, afternoon. He said morning is okay.

24 1:00 or 1:30.

25 THE COURT: 1:00 would work for the Court.

1                   MR. GORDON: That's fine with me, Your  
2 Honor.

3                   MR. PAYNE: It works with me, too, Your  
4 Honor.

5                   THE COURT: All right. Well, we'll -- is  
6 that your last witness, Mr. Payne?

7                   MR. PAYNE: Yes. He's our last witness.

8                   THE COURT: All right. I'll receive that  
9 testimony and then oral argument after that.

10                  MR. PAYNE: Thank you.

11                  THE COURT: All right. Thank you.

12                  MR. GORDON: Thank you.

13                  THE COURT: The court is in recess.

14 (Concluded at 5:03 p.m.)

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**REPORTER'S CERTIFICATE**

STATE OF UTAH )  
COUNTY OF SALT LAKE ) SS.

I, Robin Conk, Registered Professional  
Reporter, do hereby certify:

That on August 19, 2010, I produced a transcript from electronic media at the request of Douglas Payne;

That the testimony of all speakers was reported in stenotype and thereafter transcribed, and that a full, true, and correct transcription of said testimony is set forth in the preceding pages, according to my ability to hear and understand the tape provided;

That the original transcript was sealed and delivered to Douglas Payne for safekeeping.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

CERTIFIED this 19th day of August, 2010.

ROBIN CONK, RPR



April 27, 2010

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